

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

ePLUS, INC.,	)	
	)	
	)	Case No. 3:09CV620 (REP)
Plaintiff,	)	
	)	
v.	)	
	)	
LAWSON SOFTWARE, INC.	)	
	)	
	)	
Defendant.	)	

**MOTION TO APPROVE LAWSON’S SUPERSEDEAS BOND  
AND STAY THE ENFORCEMENT OF THE COURT’S ORDER  
ENTERING JUDGMENT FOR DAMAGES PENDING  
APPEAL AND TO STAY EXECUTION ON SAID  
JUDGMENT PENDING DETERMINATION OF THIS MOTION**

Defendant Lawson Software, Inc. (“Lawson”) hereby moves the Court, pursuant to Federal Rule of Civil Procedure 62(d), to approve the supersedeas bond in the form attached hereto, to stay the enforcement of the monetary judgment in the Court’s Order of August 16, 2013 (D.I. 1088) (the “Order”) pending and during the appeal of the Order, and to stay execution on said judgment pending determination of this motion. In support of this Motion, Lawson states as follows:

1. Federal Rule of Civil Procedure 62(d) provides that Lawson is entitled to a stay of the monetary judgment in the Order pending appeal upon the Court’s approval of a supersedeas bond.

2. On August 16, 2013, the Court entered the Order granting Plaintiff ePlus, Inc.’s (“ePlus”) Motion to Show Cause Why Lawson Software, Inc. Should Not Be Held In Contempt (D.I. 798), and entering judgment in favor of ePlus and against Lawson in the sum of

\$18,167,950 with interest thereon at 0.12% annually from the present date until paid in full. *See* D.I. 1088. On August 23, 2013 Lawson filed a Notice of Appeal to the United States Court of Appeals for the Federal Circuit of the Court's Order. *See* D.I. 1089.

3. Lawson has received approval from Arch Insurance Company to submit a supersedeas bond in the form attached hereto as Exhibit A. The proposed bond is in the amount of \$18,217,950, which covers the full amount of the judgment, together with an additional \$50,000.00 to cover the accrual of post-judgment interest, as awarded by the Court, throughout the appellate process.

4. Lawson will submit to the Clerk's Office for posting a fully executed version of the bond shown in Exhibit A, along with the appropriate power of attorney for Arch Insurance Company, within three business days of this Court's entering an order granting this Motion.

5. Lawson had previously informed the Court, and counsel for ePlus, that Lawson was in the process of arranging for security, under Fed. R. Civ. P. 62, in connection with the appeal. *See* Transcript of 8/25/13 at 5-6. Lawson has provided counsel for ePlus with a copy of Exhibit A, the form of the proposed bond.

6. ePlus has indicated that it opposes any stay of the Court's judgment and contends that the amount of the proposed bond "is insufficient to protect the ongoing harms incurred by ePlus for each day that Lawson/Infor is in violation of the Court's injunction." Email of J. Albert to R. Mark (Aug. 29, 2013, 3:51 p.m.). ePlus is incorrect in its contention, as the only potential means by which the existing judgment in favor of ePlus would increase is by the accrual of post-judgment interest, which is covered by the amount of the bond. If Lawson obtains a stay of the Order (*see* ¶ 8, *infra*) it will not be in ongoing contempt of the Order during the pendency of the appeal. Moreover, even if Lawson were to continue conduct enjoined by the

Court without having obtained a stay (which it will not), the coercive fine would be payable to the Court and not to ePlus. The Order provides ePlus compensation for past, adjudicated contempt and Lawson's proposed supersedeas bond fully secures that judgment.

7. To the extent that the Court elects to consider ePlus's objection, and does not grant this motion prior to the close of business on Friday, August 30, 2013, Lawson requests that the Court stay enforcement of the monetary judgment in the Order pending the resolution of this Motion and if necessary, any motion to the Federal Circuit pursuant to Fed. R. App. P. 8(a). The Court has discretion to grant an additional stay while a motion pursuant to Fed. R. Civ. P. 62(d) is pending. *See Admiral Ins. Co. v. Ace American Ins. Co.*, No. 5:08cv00055, 2009 WL 1220537, at \*2 (W.D. Va. May 1, 2009).

8. By separate motion, Lawson has moved for a stay pending appeal of the Order, of the deadline for Lawson to be in compliance with the injunction and the corresponding start date of any coercive fine, from September 20, 2013 until 30 days after the Federal Circuit issues its decision on the appeal of the Order. *See* D.I. 1090.

WHEREFORE, for the foregoing reasons, Lawson respectfully requests that the Court grant this Motion, approve the supersedeas bond in the form attached hereto, and stay the enforcement of the monetary judgment in the Order pending and during the appeal of the Order.



**CERTIFICATE OF SERVICE**

I certify that on this 29<sup>th</sup> day of August, 2013, a true copy of the foregoing will be filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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